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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; I. G. et al., Real Parties in Interest.	B210149 (Super. Ct. No. CK73257)

ORIGINAL PROCEEDING in mandate. Valerie Skeba, Juvenile Court Referee. Petition granted.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel, and Teri Breuer, Deputy County Counsel, for Petitioner.

No appearance for Respondent.

Law Office of Alex Iglesias, Carolyn Hobson and Steven D. Shenfeld for Mother.

M.R., in pro. per.; Wallin & Klarch and Bethanie L. Thomas for Father.

Children's Law Center of Los Angeles, Sophia Ali and Kristen Balelo for the Child.

INTRODUCTION

After a contested jurisdiction hearing, the juvenile court dismissed a dependency petition alleging then two-year-old D.R. was at risk of harm from her parents. Despite undisputed evidence that mother had repeatedly threatened to kill her daughter out of anger, the juvenile court concluded there was no basis for jurisdiction. The Department of Children and Family Services (DCFS) challenges this ruling, arguing there is no substantial evidence to support dismissal of the allegations against the mother in light of the uncontroverted and repeated threats. We agree and grant the petition, in part.

PROCEDURAL BACKGROUND AND FACTS

I.G. and M.R. are the parents of D. R., who was born in September 2005. Father has a nine-year-old son from another relationship. It appears from the record that by about September 2007, mother and father had ended their relationship. But because mother had lost her residence, sometime in March 2008 father allowed her and D.R. to live temporarily with him, his own mother, and his son.

On June 5, 2008, mother found out father had a girlfriend named Medina. She decided to move out with her daughter to live with a friend. Mother became increasingly upset and, between June 6 and 7, left three voicemail messages at father's residence accusing Medina of breaking up mother and father's relationship. Mother also threatened to kill herself and her daughter.

In the first voicemail, mother said, "He . . . is never ever gonna fucken [*sic*] see his daughter again. Tell him that when he gets [D.R.'s] name tattoo [*sic*] on his arm, tell him to write 'Rest in Peace' underneath her name. Me and his daughter are gonna die! He knows what I started this morning. I'm gonna finish it." The next day, mother left a second voicemail, saying, "Me and my daughter are no longer gonna exist. I'm sitting in my house right now with the gas on." Mother again accused Medina of being involved with father and made statements indicating father's decision would cost their daughter her safety. In her last message, mother said, "Instead of the father fucking you he should be worried about his daughter. Tell him that [his daughter] is dying, tell him!"

DCFS was notified of the voicemails and on June 11 detained the child. The dependency petition alleged (1) mother had mental health problems and was suicidal because she threatened to kill herself and her daughter, and therefore the child was at risk of harm (count b-1); and (2) mother and father have domestic violence problems because in one incident father pulled mother's hair and pushed her while in their daughter's presence (count b-2).[1] Only count b-2 contained allegations against father. The juvenile court found substantial danger existed to the child's physical and emotional health and ordered her detained.

At first, mother denied she had left the messages. Later, she acknowledged making the threatening voicemails, but told the social worker that she did not intend to harm herself or her daughter. Mother said she left the messages because she was feeling depressed and had suicidal thoughts, but never had any thoughts of harming her daughter. She also said, "I was just angry because I found out he was cheating. I thought the reason he wasn't picking up the phone was because he was with the other girl. . . . I was basically just saying those things because I wanted him to call because I wanted to know where he was at." Mother repeatedly denied having any current suicidal or homicidal thoughts.

Father's mother, the child's paternal grandmother, told the social worker that mother was very jealous and was constantly harassing father. She further said that mother was very upset with the father because he had a new girlfriend. Father denied the allegations of domestic violence.

Mother was evaluated by Shields for Families and diagnosed as having an adjustment disorder with depressed mood. The program recommended that mother undergo individual and couples psychotherapy and attend parenting classes. Mother was also evaluated by the Children's Institute and assessed as suffering from depression and possibly post traumatic

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[1] The allegations in counts b-1 and b-2 were both based upon Welfare and Institutions Code section 300, subdivision (b), which gives the juvenile court jurisdiction if the court finds "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as the result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . ." Subsequent code references are to the Welfare and Institutions Code.

stress syndrome. The Institute recommended that she undergo individual psychotherapy, domestic violence and housing counseling, and attend parenting classes.

The contested jurisdiction hearing took place on August 20, 2008. Father testified and again denied all of the allegations, specifically those regarding domestic violence. Father also said mother left the voicemails "because she was angry and mad at the situation. But she did not mean those things. [¶] . . . [¶] . . . [S]he is a good mother." Father said he is not concerned about mother caring for his daughter, that she is not capable of doing the things she said, loves their daughter and would never do anything to hurt her.

Mother testified, admitting to leaving the voicemail messages and said she used poor judgment. She said she has never done anything to hurt her daughter and is not capable of doing so. She left the voicemails because she was angry. She would also never hurt herself. She said it was not true that father had been violent, and the social worker had misunderstood what she was saying.

After closing arguments, the juvenile court found no basis for jurisdiction and dismissed the petition in its entirety. The court found father "very credible." The court acknowledged mother was angry about the affair and mother and father were not getting along, but stated what mother did was "dumb" and "inappropriate." The court found mother did not intend to kill herself and the child, and was not serious in her threats. The court credited the testimony of father and his son, and found the alleged domestic violence did not occur.

The juvenile court gave little weight to the evaluation by the Children's Institute--which concluded mother was depressed and had post-traumatic stress due to domestic violence--primarily because it was based on false information given by mother. "I don't believe the domestic violence happened the way the Department describes. And I certainly don't believe it happened the way it is written in the [Children Institute's] report."

DCFS filed a writ petition challenging the trial court's dismissal. We stayed the juvenile court's ruling and, after receiving further briefing, issued an alternative writ of mandate as to that part of the ruling dismissing the allegations against mother (count b-1).

Although DCFS argued in the juvenile court against dismissal of both counts, it concedes that it seeks reversal here only on count b-1 against the mother.[2]

PETITIONER'S CONTENTION

DCFS contends the juvenile court erred in dismissing the allegations against mother and that there is no substantial evidence to support the ruling. DCFS argues that the uncontroverted evidence that mother repeatedly threatened to kill her daughter required the court to assume jurisdiction over mother. We agree.

DISCUSSION

Jurisdiction hearings are governed by section 355, which provides, "At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300." (§ 355, subd. (a).) The juvenile court has no discretion to dismiss a dependency petition if it concludes the moving party has met its evidentiary burden. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.) In dismissing the dependency petition in this case, the juvenile court necessarily found that DCFS had failed to meet that burden.

An appellate court reviewing a jurisdiction order must determine whether it was supported by substantial evidence. (*In re Sheila B.*, *supra*, 19 Cal.App.4th at p. 199; *In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) "Substantial evidence" means such evidence which is credible, of solid value, of ponderable legal significance, and which a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1

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[2] Counsel for child, both in her appellate brief and at oral argument, joined in the position taken by DCFS that count b-1 should be reinstated but that count b-2 should remain dismissed. All parties orally represented to the court that, subsequent to the completion of briefing, the trial court placed the child with father. Each party expressly requested at oral

Cal.App.4th 814, 820; *In re Angelia P.* (1981) 28 Cal.3d 908, 924.) The focus is on the quality, not the quantity, of the evidence. In other words, "[v]ery little solid evidence may be 'substantial,' while a lot of extremely weak evidence might be 'insubstantial.'" (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871.) The lack of substantial evidence in support of a judgment makes it erroneous as a matter of law. (*In re Sheila B., supra*, p. 199, fn. 6.)

It was undisputed on three occasions, over a 24-hour period, mother threatened to kill her two-year-old daughter. Mother did not leave one message in the heat of the moment. She left three separate voicemail messages. In each message, mother said she would kill her daughter. One message even specified the manner of the execution, demonstrating she had thought about how to accomplish her daughter's death. Mother explained these threats were hollow and were prompted by her anger after finding out about father's relationship with a new girlfriend. But two or three days before mother apparently knew about this relationship, mother had called father's cell phone and threatened that he "better come home or your daughter's going to get it." When father confronted mother about what she meant and why she said it, mother said she was just "playing" and would not harm her daughter. This evidence suggests that mother's underlying anger is the issue, not only jealousy of father's girlfriend.

The fact that when mother gets angry she considers and verbally threatens to hurt or kill herself and her daughter is, in our judgment, indisputable evidence of a substantial risk of harm to the child. (§ 300, subd. (b).) This conclusion is supported by the two therapeutic evaluations of mother, both of which indicated she suffered from depression and recommended individual psychotherapy. Evidence that father and mother both *believed* mother would not carry out the threat was not legally substantial to support denial of jurisdiction. As the appellate cases tell us, "substantial evidence is not synonymous with any evidence. [Citation.] 'A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.]'" (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216-217.) The statements themselves, in jarring detail, repeatedly made and uncontroverted, precluded

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argument that we not disturb that placement. We address only jurisdiction, not placement,

the trial court with crediting as legally substantial mother's bald statement that she did not intend any harm. The evidence here can only be interpreted as consistent with a finding that mother's threats placed her daughter at substantial risk of physical harm or illness.

DISPOSITION

The writ petition is granted, in part. The juvenile court is ordered to vacate that part of its order of August 20, 2008, dismissing the allegation against mother (count b-1) and proceed with that part of the dependency case. Based on DCFS's concession, we do not disturb the trial court's order dismissing count b-2. Our prior stay order is dissolved.

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RUBIN, J.

We concur:

FLIER, J.

COOPER, P. J.

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in this opinion.